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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1942

No. 734 [redacted] 9

GLASS CONTAINER ASSOCIATION OF AMERICA, INC., CHARLES R. STEVENSON AND EMORY G. ACKERMAN,

Appellants,

vs.

THE UNITED STATES OF AMERICA

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF OHIO.

STATEMENT AS TO JURISDICTION.

LUTHER DAY,
RUFUS S. DAY,
Counsel for Appellants.

INDEX.

SUBJECT INDEX.

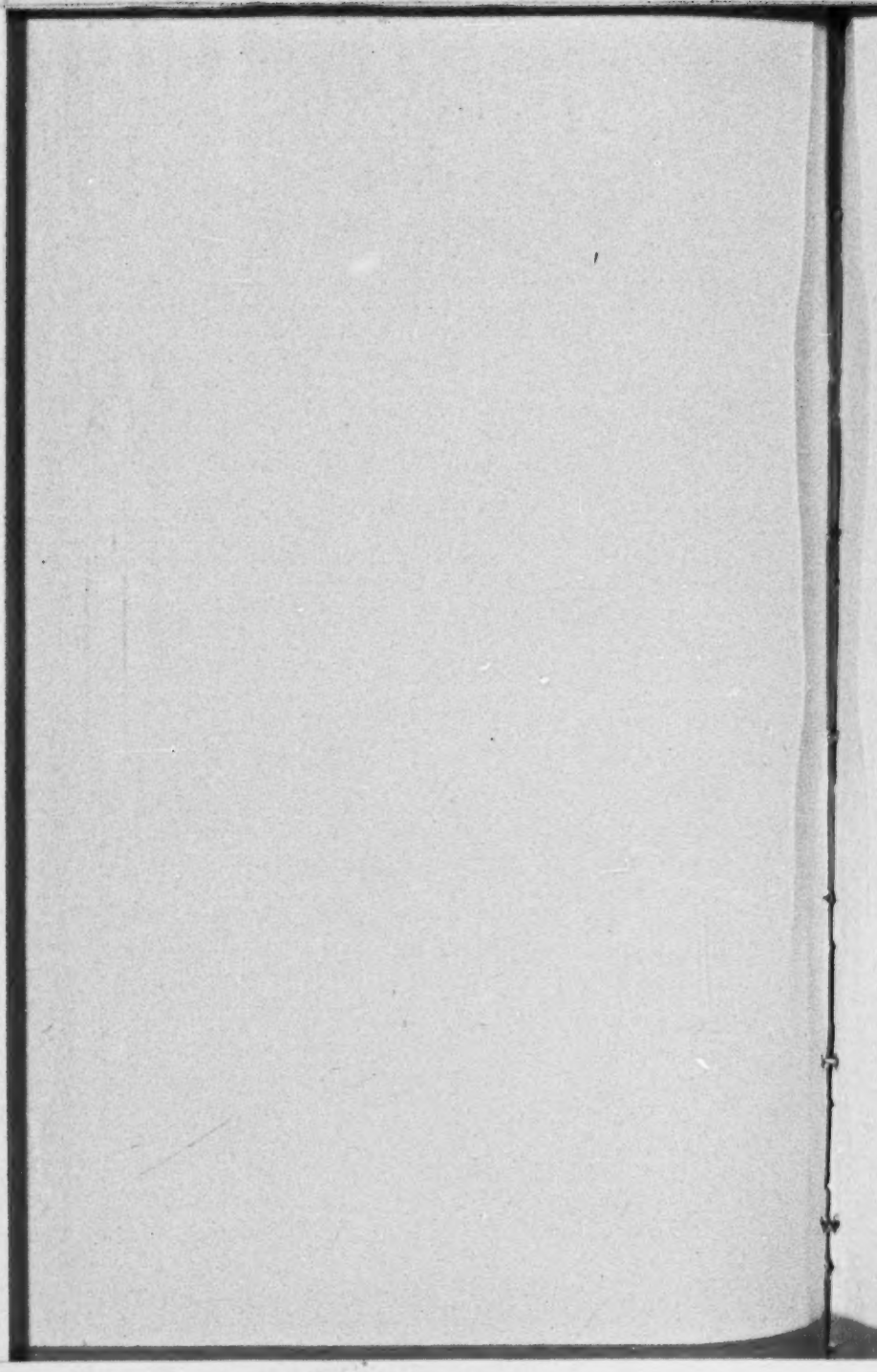
	Page
Statement as to jurisdiction	1
Jurisdiction	2
Statutes involved	2
The nature of the case and of the rulings of the District Court	4
The questions here raised are substantial	6

TABLE OF CASES CITED.

Appalachian Coals, Inc. v. *U. S.*, 288 U. S. 344	6
Atlantic Cleaners and Dyers v. *U. S.*, 286 U. S. 427	2
Ethyl Gasoline Corp. v. *U. S.*, 309 U. S. 436	2
Interstate Circuit, Inc. v. *U. S.*, 306 U. S. 208	2
Maple Flooring Association v. *U. S.*, 268 U. S. 563	2
Sugar Institute v. *U. S.*, 297 U. S. 553	2, 6
United States v. *Masonite Corp., et al.*, 316 U. S. 265	2

STATUTES CITED.

Clayton Act of October 15, 1914, 38 Stat. 730, (15 U. S. C., secs. 14 and 25)	3
Expediting Act of February 11, 1903, Section 2, as amended (32 Stat. 823; 36 Stat. 1167; 15 U. S. C. 29)	2
Judicial Code, Section 238, as amended, (36 Stat. 1157; 38 Stat. 804; 43 Stat. 938; 28 U. S. C. 345)	2
Sherman Act of July 2, 1890, 26 Stat. 209, as amended, (15 U. S. C., secs. 1, 2 and 4)	2



IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE NORTHERN DISTRICT OF OHIO,
WESTERN DIVISION

Civil Action No. 4426

THE GLASS CONTAINER ASSOCIATION OF AMERICA, INC., CHARLES R. STEVENSON AND EMORY G. ACKERMAN,
Appellants,

vs.

UNITED STATES OF AMERICA,
Appellee.

STATEMENT AS TO JURISDICTION.

This is an appeal to the Supreme Court of the United States by the Glass Container Association of America, Inc., Charles R. Stevenson and Emory G. Ackerman, appellants, jointly and each severally, from a final judgment of the District Court of the United States for the Northern District of Ohio, Western Division, in an action in equity by the United States against these appellants and various other defendants charging a conspiracy in violation of the Sherman Antitrust Act and the Clayton Act in which judgment was rendered against these appellants and certain other defendants. In compliance with Rule 12 of the Supreme Court these appellants jointly and each severally submit herewith their statement particularly disclosing the basis on which the Supreme Court has jurisdiction to review the judgment of the District Court herein.

Jurisdiction.

The jurisdiction of the Supreme Court to review by direct appeal the judgment entered herein by the District Court is conferred by Section 2 of the Expediting Act of February 11, 1903, as amended (32 Stat. 823; 36 Stat. 1167; 15 U. S. C., sec. 29), and section 238 of the Judicial Code, as amended (36 Stat. 1157; 38 Stat. 804; 43 Stat. 938; 28 U. S. C., sec. 345).

The following decisions sustain the jurisdiction of the Supreme Court to review the judgment herein on direct appeal: *United States* v. *Masonite Corp., et al.*, 316 U. S. 265; *Ethyl Gasoline Corp.* v. *United States*, 309 U. S. 436; *Interstate Circuit, Inc.* v. *United States*, 306 U. S. 208; *Sugar Institute* v. *United States*, 297 U. S. 553; *Atlantic Cleaners & Dyers* v. *United States*, 286 U. S. 427.

Statutes Involved.

The Sherman Act of July 2, 1890, 26 Stat. 209, as amended (15 U. S. C., secs. 1, 2 and 4):

> "SEC. 1. Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is hereby declared to be illegal * * *. Every person who shall make any contract or engage in any combination or conspiracy hereby declared to be illegal shall be deemed guilty of a misdemeanor, and, on conviction hereof, shall be punished by fine not exceeding $5,000, or by imprisonment not exceeding one year, or by both said punishments, in the discretion of the court."
>
> "SEC. 2. Every person who shall monopolize, or attempt to monopolize, or combine or conspire with any other person or persons, to monopolize any part of the trade or commerce among the several States, or with foreign nations, shall be deemed guilty of a misde-

meanor, and, on conviction thereof, shall be punished by fine not exceeding five thousand dollars, or by imprisonment not exceeding one year, or by both said punishments, in the discretion of the court."

"SEC. 4. The several circuit courts of the United States are hereby invested with jurisdiction to prevent and restrain violations of this act; and it shall be the duty of the several district attorneys of the United States, in their respective districts, under the direction of the Attorney-General, to institute proceedings in equity to prevent and restrain such violations. Such proceedings may be by way of petition setting forth the case and praying that such violation shall be enjoined or otherwise prohibited. When the parties complained of shall have been duly notified of such petition the court shall proceed, as soon as may be to the hearing and determination of the case; and pending such petition and before final decree, the court may at any time make such temporary restraining order or prohibition as shall be deemed just in the premises."

The Clayton Act of October 15, 1914, 38 Stat. 730 (15 U. S. C., secs. 14 and 25):

"SEC. 14. It shall be unlawful for any person engaged in commerce, in the course of such commerce, to * * * make a sale or contract for sale of goods, wares, merchandise, machinery, supplies, or other commodities, whether patented or unpatented, for use, consumption, or resale within the United States * * * or fix a price charged therefor, or discount from, or rebate upon, such price, on the condition, agreement, or understanding that the lessee or purchaser thereof shall not use or deal in the goods, ware, merchandise, machinery, supplies, or other commodities of a competitor or competitors of the lessor or seller, where the effect of such lease, sale, or contract for sale or such condition, agreement, or understanding may be to substantially lessen competition or tend to create a monopoly in any line of commerce."

"SEC. 25. That the several district courts of the United States are hereby invested with jurisdiction to prevent and restrain violations of this Act, and it shall be the duty of the several district attorneys of the United States, in their respective districts, under the direction of the Attorney General, to institute proceedings in equity to prevent and restrain such violations. Such proceedings may be by way of petition setting forth the case and praying that such violation shall be enjoined or otherwise prohibited. When the parties complained of shall have been duly notified of such petition, the court shall proceed, as soon as may be, to the hearing and determination of the case; and pending such petition, and before final decree, the court may at any time make such temporary restraining order or prohibition as shall be deemed just in the premises. Whenever it shall appear to the court before which any such proceeding may be pending that the ends of justice require that other parties should be brought before the court, the court may cause them to be summoned, whether they reside in the district in which the court is held or not, and subpoenas to that end may be served in any district by the marshal thereof."

The final judgment of the District Court was entered on October 8, 1942. A petition for appeal to the Supreme Court of the United States was presented by these appellants to the District Court and by it allowed on December 3, 1942. A copy of the opinion of the District Court is annexed hereto.*

The Nature of the Case and of the Rulings of the District Court.

The Glass Container Association of America, Inc., appellant, at the times herein involved was the trade association

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*(Clerk's Note—The opinion is printed as a separate volume.)

of the glass industry, and the individual appellants, Charles R. Stevenson and Emory G. Ackerman, were the business manager and assistant business manager respectively of the Association; the other corporate defendants herein, many of which together with their affiliated defendants have filed their separate appeals to the Supreme Court, are manufacturers of glassware or the holders of patents relating to the manufacture of glass-making machinery. The complaint charges generally that the defendants are parties to a conspiracy to monopolize patents controlling glass-making machinery, and the manufacture and distribution thereof, and thereby to monopolize or restrict the manufacture and distribution of pressed and blown glassware and glass containers. The charge against these appellants is that, since 1928, by their acts and methods, they have created and extended the general conspiracy charged. Specifically, it is claimed that they have, in the conduct of the Association, restrained the expansion of the glass industry and discouraged newcomers from entering therein, tampered with the price structure, and enforced an illegal system of production quotas and limited production by unlawful moral sanctions. These appellants deny each and all of these charges, and contend that, if there ever were any objectionable practices upon their part, they had been voluntarily abandoned a considerable period of time before this action was instituted. The District Court found that they were parties to the general conspiracy charged insofar as it related to the manufacture and distribution of glass containers, and had restricted expansion in the industry and limited production by an unlawful system of production quotas and moral sanctions, and thereby had restrained trade and promoted a monopoly in the manufacture and distribution of glassware. The final judgment of the District Court enjoins these appellants from further participation

in the alleged conspiracy and imposes restrictions and limitations upon the future conduct of the business and affairs of the Association.

The Questions Here Raised Are Substantial.

The final judgment of the District Court and the order of injunction thereby granted are, we believe, unsupported and unwarranted by the record herein, and in conflict with the principles announced by the Supreme Court in trade association cases, wherein generally similar factual situations have been considered and trade association activities such as are here involved held to be lawful and in the public interest, particularly *Sugar Institute, Inc.* v. *United States,* 268 U. S. 563; *Appalachian Coals, Inc.* v. *United States,* 288 U. S. 344. The decree of the District Court restricting the future activities of the Association is, we believe, not only without precedent in its scope and effect, but so unnecessarily severe as to seriously threaten and imperil the future existence and usefulness of the Association to the important industry it serves and to the public generally. The questions here involved, because of the rules of future conduct promulgated by the District Court, are of importance not only to the appellant trade association but to trade associations generally. By way of illustration, the Association is enjoined from pursuing hitherto lawful and permissible activities in the collection and distribution of statistical data; from distributing or reporting statistical compilations concerning *any aspect* of the manufacture and sale of glassware or glass-making machinery, other than information relating to Association dues, unless such information, regardless of the character or nature theerof, is made available to the general public; from collecting, compiling, analyzing, or distributing data concerning production, sales, orders, shipments, deliveries, costs,

or prices where there is any disclosure thereof concerning *any particular manufacturer* or where the purpose or *effect* is to coerce or intentionally persuade any manufacturer to limit or control production or to fix, raise or maintain prices. In another aspect, the decree of the District Court is unusual: the Association is required to so amend its charter and by-laws as to provide that, in the future, it shall never have as an officer, director or employee any person connected in any manner with certain defendant corporations who comprise a substantial part of the glass industry. This part of the decree raises the question as to whether it is necessary or wise for a court of the United States, in order to insure obedience to its decree, to require action so severe and perhaps destructive as this, and whether its power to deal summarily with those who violate its orders is not sufficient in the premises.

Respectfully submitted,

LUTHER DAY,
RUFUS S. DAY,
Attorneys for Appellants, Glass Container Association of America, Inc., Charles R. Stevenson and Emory G. Ackerman.